FCC Proceeding 07-57
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Citizen and Consumer
Public Comment and Submission for the Record
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The Honorable Kevin J. Martin
Chairman, Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: Proposed Sirius and XM Merger Docket 07-57

Dear Chairman Martin and Fellow Commissioners:

I respectfully request the Commission allow the proposed Sirius/XM merger to proceed. For reasons outlined in my analysis, I urge the commission to expedite the review process so as not to prolong this matter any further. Enclosed in this document is my analysis titled: ***Analysis of the Proposed Sirius and XM Merger in Terms of the Horizontal Merger Guidelines.*** Failure to allow this merger would undermine the public trust in our government's ability to distinguish between legitimate and lawful business interests, and protecting competitors from competition.

As my analysis reveals, the merger is without a doubt in the public interest, while those arguing against it are simply seeking state sponsored financial protections from satellite radio competition. Please don't be misled into believing the propaganda and false rhetoric from NAB and their supporters. Doing so would be a mistake that would compromise the integrity of a fair marketplace, undermine the public trust, serve to protect select competitors while harming others, and violate public interest.

On a related matter, please modify the language in the 1997 SDARS Report & Order so this consolidated application request won't be in conflict with existing FCC rules, codified or otherwise.

Respectfully submitted,

Patrick Sharpless
Citizen and Consumer

Analysis of the Proposed Sirius and XM Merger in Terms of the Horizontal Merger Guidelines

Fourteen years ago the FTC and DOJ (the Agencies) jointly issued the 1992 Horizontal Merger Guidelines to describe their application to the antitrust laws related to horizontal mergers. Since these guidelines have been issued, the Agencies have consistently applied the Guidelines' analytical framework to the horizontal mergers under review. In March 2006 the Agencies jointly issued Commentary on the Guidelines to provide a greater transparency and foster deeper understanding regarding antitrust law enforcement.

The Guidelines' five-part organizational structure has become deeply embedded in mainstream merger analysis, including analysis by the FCC. For this reason, I provide my analysis based on the Horizontal Merger Guidelines. The respective parts are: (1) market definition and concentration; (2) potential adverse competitive effects; (3) entry analysis; (4) efficiencies; and (5) failing and exiting assets.

The following is my attempt to outline some of the satellite radio merger issues, as I understand them, in terms of the Horizontal Merger Guidelines.

The Agencies' Focus Is on Competitive Effects

The competitive effect of the satellite radio merger is the consolidation of two satellite radio providers into one business which competes in the already vigorous, and rapidly advancing, audio entertainment landscape. Under the merged entity, the satellite radio business will be strengthened, but not because they receive government subsidies, competitive advantage from regulatory financial protections or tax incentives. Instead, it's the smart business decision between company executives and willing shareholders. Ultimately, the merger synergies will improve operational stability, leading to improved competition. This improved operational success will benefit the consumer, but equally important, will act to encourage other competitors in the market to strive for even greater achievements.

Apple Inc. which makes the ever popular iPod, recently announced 100 million iPods have been sold. The iPod competes directly with the portable satellite radio devices like the Sirius Stiletto and XM's Inno, Helix and Nexus players. Apple iTunes' audio player with internet radio, multiple playlist functions, native burn support, visual effects and file conversion, competes directly with internet radio services provided by a variety of providers, including: Apple Inc., Yahoo! Music, Clear Channel Communications, Sirius Satellite Radio and XM Satellite Radio, just to mention a few. Is Apple Inc. opposing the satellite radio merger? No.

Yahoo! Inc. is another competitor in the audio entertainment landscape; they recently announced an agreement with SanDisk allowing the newly released, and currently available, Sansa portable mp3 player to utilize Wi-Fi capabilities and wirelessly access both free and subscription-based services from Yahoo! Music. This isn't the first portable mp3 player with Wi-Fi capabilities to hit the market; Microsoft's Zune player was, and also equipped with Wi-Fi capabilities is Apple's iPhone, expected to arrive in June 2007. Is Yahoo! Inc. opposing the satellite radio merger? No.

Both Apple Inc. and Yahoo! Inc. are busy competing in this rapidly advancing audio entertainment market and don't have time to argue with other competitors about the differences between their products and services. Apple Inc. and Yahoo! Inc. enliven the competitive spirit in the marketplace when they bring exciting new products and services to market. Meanwhile, Sirius and XM are attempting to make that same sort of contribution, but trade organizations like NAB are standing in their way and opposing the satellite radio merger.

The opposition to the satellite radio merger is interfering with the efforts of the satellite radio companies to effectively overcome compatibility issues between their two product lines and services. In order to streamline efficiencies, eliminate redundancies and enhance opportunities for consumer driven product improvements, the satellite radio companies seek to merge. NAB argues the merger would result in a monopoly; however their real intention is to seek state sponsored financial protections from satellite radio competition. Has NAB admitted they seek these protections for terrestrial radio? No, they emphatically deny this while insisting they are concerned satellite radio would charge monopoly rents to the consumer if the merger is approved. How can you trust a trade organization who argues for consumer protection in the name of state sponsored financial protections from satellite radio competition?

Suspiciously, at the same time Sound Exchange exempts terrestrial radio from paying performance royalties, their parent company, the Recording Industry Association of America (RIAA), files a meritless lawsuit against XM Satellite Radio. This lawsuit attempts to circumvent and undermine the intentions of the Audio Home Recording Act of 1992 (AHRA). The AHRA amended copyright law by adding chapter 10 "Digital Audio Recording Devices and Media." The Act enabled the release of recordable digital formats without fear of contributory infringement lawsuits. The Act also includes blanket protection from infringement actions for private, non-commercial digital audio copies made with digital audio recording devices. Despite these federal protections, the RIAA filed a meritless lawsuit against XM. This places companies like XM in an awkward position when attempting to deliver exciting new products and services to market; especially while undergoing the regulatory merger review process. Meanwhile, RIAA's friends in terrestrial radio enjoy the comfort of satellite radio experiencing meritless legal troubles. These meritless legal troubles exacerbate effective utilization of resources for the introduction of exciting new products and services, undermining the capacity for satellite radio to compete with terrestrial radio and others. Further, the legal troubles cost a lot of money to properly defend, and serve to complicate timely responses in the regulatory merger review process. This reeks of collusion, which isn't surprising in light of the repeated *'payola'* schemes involving record companies and terrestrial radio broadcasters. '*Payola'* involves accepting cash or other valuable consideration from record labels in exchange for airplay of artists from those labels, without disclosing those arrangements. In April 2007, the FCC announced "voluntary contributions" from broadcasters including CBS Radio, Citadel Broadcasting Corporation, Clear Channel Communications, Inc. and Entercom Communications Corp. totaling $12.5 million to resolve the FCC investigation into "possible 'payola' violations." See FCC Orders 07-27, 07-28, 07-29 and 07-42 for more information.

Allowing the merger to proceed will, among other things, strengthen competition in the marketplace; synergies will stabilize the satellite radio industry and economies of scale will lower prices for products and services, which will enable consumer driven service enhancements. Despite what the competitors to satellite radio say, the benefits of the merger are a tremendous opportunity for both the consumer and the marketplace alike.

Analytical Frameworks for Assessing Whether a Merger between Competing Firms May Substantially Lessen Competition

1) *Will the merger increase market power by facilitating coordinated interaction among rival firms?*

It is likely that market conditions are conducive to coordinated interaction when the firms in the market previously have engaged in express collusion and when the salient characteristics of the market have not changed appreciably since the most recent such incident. There is no evidence suggesting the merger will increase satellite radio market power in such a way as to facilitate coordinated interaction among rival firms. Related, however, is the fact that rivals to satellite radio already appear to be engaged in coordinated interactions: exemptions from performance royalties and 'payola'. Specifically, Sound Exchange exempts terrestrial radio broadcasters from paying performance royalties while charging these same royalties to virtually every other audio entertainment provider. It appears terrestrial radio broadcasters have been in collusion with Sound Exchange regarding performance royalties, but no such anticompetitive behavior exists between Sound Exchange and satellite radio. Further, reams of incriminating documents exist revealing how record companies were involved in illegal '*payola'* schemes with terrestrial radio broadcasters, who illegally accepted the bribes for favored airplay. Again, these illegal schemes don't exist in the satellite radio industry. Hence, coordinated interaction undermining free markets is being conducted by terrestrial radio and their friends, while NAB accuses satellite radio of seeking a merger to monopoly. Meanwhile NAB insists the "merger to monopoly" must be prevented because it may lead to anticompetitive behavior.

2) Will the merger enable the merged firm unilaterally to raise price or otherwise exercise market power?

When the two satellite radio providers are allowed to merge, consumers will have more choice at lower prices, consumers will have more diverse programming, and the merger will accelerate deployment of advanced technology including commercializing interoperable radios—providing even greater choice and convenience, lowering the cost of production for interoperable radios due to economies of scale, and create operational efficiencies with a significant portion of these savings to be shared with customers. These results are inconsistent with the claims that unilateral price hikes or exercise of market power will cause harm to the consumer.

Investigations Are Intensively Fact-Driven, Iterative Processes

Merger analysis depends heavily on the specific facts of each case. Although the products and services of the merging satellite radio companies are particularly close substitutes, which may give rise to anticompetitive concerns, these concerns should only be viewed in consideration of other substitutes currently available in the market, or expected to be available within the next two years, before evaluating if anticompetitive thresholds would be exceeded.

All facts point to a flourishing audio entertainment industry, rife with competition and a multitude of market participants. Allowing the satellite radio companies to merge wouldn't harm anyone. In fact, allowing the merger would improve the competitive marketplace and strengthen consumer welfare. Terrestrial radio is actively transitioning analog stations into digital ones, converting analog radio to multicasting HD Radio, providing internet radio services and cell phone music, among other competitive improvements. Breaking down artificial regulatory barriers which threaten to interfere with this satellite radio merger is what the consumer and marketplace both desire; NAB on the other hand wants to use these same artificial barriers for unfair competitive advantage. These facts speak for themselves.

The Same Evidence Often Is Relevant to Multiple Elements of the Analysis

Terrestrial radio has completely dominated the audio entertainment landscape in partnership with their friends in the record industry, who have provided exemptions from royalties, and cash from *'payola'* schemes, for decades. Some have estimated the penetration of terrestrial radio in the United States is in excess of 99%. Since satellite radio was licensed ten years ago, they have penetrated only 4% of the consumer market, with about 13 million combined subscribers. One might argue the reason satellite radio hasn't performed better is because of the uneven playing field characterized by the royalty exemptions and payola schemes involving terrestrial radio and their friends in the record industry. Those coordinated effects demonstrate the monopoly power terrestrial radio truly has; and those same anticompetitive behaviors don't exist in relation to satellite radio. Even in the face of opposing the satellite radio merger, the performance royalty exemptions for terrestrial radio continue. These ongoing monopolistic and anticompetitive behaviors demonstrated by terrestrial radio and their friends in the record industry, not only harm terrestrial radio's competitors, but the consumer as well; both depend on a fair and equitable marketplace in which to conduct business.

In a recent letter to the FCC, a terrestrial radio broadcaster explained how he reconciled his past recognition of all the entertainment options like iPods, Internet radio, satellite radio, etc. available to consumers as one of the reasons for relaxing local radio ownership rules with his present assertions the proposed satellite radio merger is a 'merger to monopoly'. Despite the articulate response, the broadcaster didn't seem to understand how to distinguish the difference between companies with different business models, and how companies with different business models compete. Why do NAB and those they represent, insist regulators evaluate the proposed satellite radio merger in terms of the terrestrial radio business model? This premise is misguided to say the least. Further, in the broadcaster's response was the claim of a, "guiding principle of avoiding government action that seriously distorts the marketplace. Government approval of the XM-Sirius merger would concentrate so much spectrum in one company—more than the combined, entire AM and FM bands with the capacity to transmit more than 300 channels into every local market in the country—that it would jeopardize the ability of free, over-the-air radio to carry out its core mission of providing local news and information." This single piece of evidence speaks volumes about how terrestrial radio is distorting the analysis. Breaking down artificial governmental barriers to facilitate a competitive marketplace is not the same thing as "government action that seriously distorts the marketplace." On the contrary, allowing this merger to proceed would reverse the serious distortions that exist in the marketplace which allow terrestrial radio to be the beneficiaries of state sponsored financial protections from satellite radio competition. And when the broadcaster suggested every local market in the country will be listening to 300 channels of satellite radio, he left out the most important part—that only those markets with consumers who are interested and willing to pay the subscription fee for the satellite radio service will be listening to satellite radio.

Another very important factor to also consider is that terrestrial radio is always a competitor to satellite radio because satellite radio subscribers are allowed the choice of listening to free terrestrial radio, any time. The same cannot be said for terrestrial radio listeners; they must agree to pay satellite radio subscription fees in order to have access. And yet, NAB continues to assert satellite radio competes with terrestrial radio, but terrestrial radio doesn't compete with satellite radio. For this argument to be raised in the context of a merger review is shocking. We all know who can't be trusted to be honest here.

I. Market Definition

Today, pre-merger, Satellite radio subscription fees are $12.95/month. Post-merger, these prices will stay the same or decrease in some instances, for same or similar services. This price stability will be the result of two things: 1) brisk competition including the largest competitor providing a free service (which has its own anti-competitive ring to it), and 2) synergies between the two companies and the associated economies of scale for their products and services. This is not the outcome one would expect in a monopoly market as described by NAB and others. Although expanded services are expected to cost more, and subscription fees will go up over time, these normal and expected phenomena are not the same thing as monopoly rents. Rather, the appropriate market definition is one which includes both satellite radio and their rivals; including rivals with particularly close substitutes, and, relatively distant ones as well. Hypothetical analysis to determine the market is unnecessary in this situation because anticompetitive effects are unlikely in any plausibly defined market.

Regardless of how the relevant market is actually defined, there are significant competitive interactions between particularly close substitutes, as well as relatively distant ones. Even if the merged satellite radio entity attempted to significantly raise prices, many monthly subscribers will discontinue service, and potential new customers will likely not subscribe at all. This outcome is understandable in and of itself, especially with the variety of alternatives available to the audio entertainment consumer. When cast in light of a free competing service like terrestrial radio, anticompetitive effects of the merger are an unlikely result. This diminishes the grossly over exaggerated concerns raised by NAB.

II. The Potential Adverse Competitive Effects of the Merger

Guidelines identify two broad analytical frameworks for assessing whether a merger between rival firms may substantially lessen competition: "coordinated interaction" and "unilateral effects."

Coordinated Interaction

Aside from advancing existing technologies like interoperable satellite radio's, backseat video etc., it is unforeseeable the post-merger environment would bear witness to audio entertainment providers engaged in some form of coordination on price, output, capacity, or other dimensions of competition, simply as a result of the merger itself. The robust competition in the audio entertainment industry will likely see little change in terms of these factors, despite existing anticompetitive coordination between competitors with satellite radio. As more light is shed on the performance royalty exemptions for terrestrial radio and the repeated *'payola'* schemes between record companies and terrestrial radio broadcasters, these anticompetitive coordinated effects will likely be reduced, in part, because of the satellite radio merger.

Unilateral Effects

As competitors to satellite radio who oppose the merger continue to speak of elevated prices and suppressed technological advancements, the satellite radio companies are guaranteeing existing radio compatibility, promising future commercially available radio interoperability, proposing same or lower pricing for same or similar service and service enhancements like backseat video. Satellite radio isn't a monopoly with or without the merger; nor would they be a dominant firm. Instead, a merged satellite radio company would still be on the competitive fringe of terrestrial radio, in part because of the anticompetitive royalty exemptions and *'payola'* schemes which have thus far, served to undermine consumer welfare while unjustly enriching terrestrial radio broadcasters and their associates. With the onset of terrestrial radio's new HD Radio, which improves sound quality and quadruples the capacity of existing AM/FM bandwidth, it's difficult to understand how a satellite radio merger would constrain competitor capacity. In fact, it doesn't.

The Telecommunications Act of 1996 paved the way for the FCC to modify their rules and allow terrestrial radio the opportunity to consolidate and form regional monopolies and a tightly unified national oligopoly. Now, a relatively small, growing, and popular service, satellite radio, wants the FCC to modify their rules once again by removing the arbitrary governmental barriers to competition. Specifically, the FCC needs to modify their language in the *Commission's 1997 SDARS Report & Order* which serves to confuse the license transfer authorization process and enable obstructionists like NAB to use the poorly written Report & Order as a means to unfairly interfere with the ability of these two satellite radio companies from being allowed to merge. Once this language has been properly modified, those seeking state sponsored financial protections from satellite radio competition will no longer be afforded the opportunity to rely on this poorly written language to protect them from competition.

Once the merger is consummated, the satellite radio company will continue building its subscriber base. One of the immediate goals will be developing a commercially available interoperable radio, capable of receiving signals from both satellite radio systems. An interoperable receiver will expand content and incent consumers to subscribe, thereby raising production needs of new interoperable radios. There is no effort to restrict capacity or output in an attempt to artificially raise the retail price to consumers; nor would this benefit the company in this critical growth phase. The products and services offered by both satellite radio companies are remarkably similar; therefore the diversion ratios between their products and services are quite low. As a result, the potential harm to consumers from any unilateral effects related to the pricing of differentiated products is essentially non-existent.

Was it necessary for Sirius to pay Howard Stern $500 million for five years? Many have suggested that was too much money, yet the highly competitive market commanded that price. While the fledgling satellite radio industry tries to get on its feet, the cut throat competition to procure talent is doing just that—cutting throats. An unobstructed free market which commands a $500 million compensation package for talent is one thing, but government mandating two satellite radio licenses, which only serve to protect the incumbent terrestrial radio oligarchy by creating an artificial competitive niche', resulting in a $500 million compensation package, is another. Although the FCC may not have originally intended to impose arbitrary restrictions on satellite radio licensees for the purpose of providing financial protections from satellite radio competition in the future, but that is what has now happened as a result of unforeseen advancements in the audio entertainment market. These financial protections are harmful to consumer welfare and undermine the public trust placed in regulators to ensure unobstructed competitive markets will in fact serve the public interest. It is precisely these arbitrary FCC imposed protections, which are in part responsible for what caused the exorbitant price tag for Howard Stern. Tear down these artificial governmental barriers to competition, and allow free market forces to return fair compensation packages to the audio entertainment market. The same is true for suppliers, retailers and advertisers. Regulatory constraints in the form of FCC Orders shouldn't provide unfair competitive advantage to terrestrial radio at the expense of satellite radio. In this case, the *Commission's 1997 SDARS Report & Order* language restricting license transfers only serves to weaken the competitive opportunities inherently available to satellite radio while unfairly protecting terrestrial radio from satellite radio competition.

III. Entry Analysis

There is no profit incentive to commercially produce an interoperable radio capable of receiving signals from both Sirius and XM, especially since the companies would be required to subsidize the cost. Although a jointly funded engineering team has developed an interoperable radio, they are large, consume more power, and are more expensive and less feature rich than the current single-system radios. There would be very little consumer interest in paying more for an interoperable radio, particularly when doing so would only benefit the consumer if also subscribing to both satellite radio services. Although NAB would be happy if satellite radio customers paid more for this 'downstream content', it's nevertheless an unwelcome burden on the consumer. Satellite radio customers don't want to subsidize and strengthen the already dominant competitive advantage afforded terrestrial radio by being forced to pay for an interoperable satellite radio they can't use without buying two subscriptions. The separate satellite systems employed by each satellite radio company causes complexities that can more easily be overcome by a consummated merger. Once the programming platforms are synchronized, the consumer has more incentive to subscribe to satellite radio without having to choose which service to pay for. Many consumers would opt for an interoperable radio once available, because of the combined content offerings. The economies of scale combined with uniform engineering design, would lower the cost of these radios, making them more practical for commercial production.

IV. Efficiencies

The proposed satellite radio merger will provide a variety of merger-specific efficiencies which NAB and other competitors refuse to recognize. Take for example the interoperable radios which are used to receive signals from each company's satellite systems. As previously stated, a jointly funded engineering team has developed an interoperable radio, but they are large, consume more power, and are more expensive and less feature rich than the current single-system radios. Despite this fact, NAB insists on arguing satellite radio companies can't be trusted because they failed to abide by the FCC rule requiring the companies to provide such a radio to the consumer. In fact, it is NAB that cannot be trusted when they misrepresent the truth like this.

The FCC initially proposed each satellite DARS applicant demonstrate that their system was capable of remotely tuning its individual mobile, fixed, and/or portable receivers across the allocated bandwidth 2310-2360 MHz, but when the available satellite DARS bandwidth was reduced from 50MHz to 25MHz by recent legislation directing the Commission to auction away 25 MHz of the S-band spectrum previously allocated solely to DARS, the FCC was left with only 25MHz for satellite DARS. This was deemed only enough for two viable and competitive companies. Because there were only going to be two satellite DARS licensees through competitive bidding, and no interim frequency assignments, the proposal for each licensee to demonstrate their system was capable of remotely tuning receivers across all 50MHz was abandoned by the FCC. Instead, the FCC ruled as follows:

> *As an alternative to this Commission mandating standards we will require that a satellite DARS applicant, in its application, certify that its satellite DARS system will include a receiver design that will permit users to access all licensed DARS systems that are operational or under construction.*

The satellite radio companies further explain the difficulty in commercially producing interoperable radios in their recent filing with the FCC as follows:

> *There is also little incentive for either company to subsidize the cost of interoperable radios, because of uncertainty whether the subsidy would be recouped since the buyer might not subscribe to that company's service. Because of these limitations, manufacturers have not expressed an interest in*

> *producing and distributing these radios, nor have any automobile manufacturers opted to include these radios in their vehicles.*

And the companies go on to say:

> *As a practical matter, the merger will improve this situation. After the transaction is consummated, the marketplace itself will provide economic incentives to encourage further innovation and the subsidization and commercial distribution of interoperable radios.*

It's difficult and financially impractical to integrate legacy satellite systems without incurring tremendous expense resolving technological incompatibilities. Imagine the cost of integrating two different satellite infrastructures from two different companies without a plausible means to pay for the integration. It would be impractical to require interoperable radios be commercially produced and distributed, which is in part why the Commission never required this in their Orders. The idea of marketing these radios to consumers, a majority of which have no interest in dual subscriptions, is just plain stupid. And yet, NAB wants everyone to believe the satellite radio companies can't be trusted because they haven't commercially produced and distributed interoperable radios. These false assertions by NAB claiming the satellite radio companies have violated FCC rules by failing to commercially produce and distribute interoperable radios is further evidence of who can't be trusted, particularly with respect to this license transfer proceeding.

The FCC rules don't require interoperable radios be commercially produced and distributed, nor does the consumer benefit from the commercial production of interoperable radios between two different companies. A consummated merger on the other hand, would allow the marketplace to provide necessary incentives which would allow the subsidization and commercial distribution of interoperable radios. Not only does this provide the best means to pay for the radios, it makes them available in the right quantities, at the right time and under the right circumstances. The Agencies should recognize these benefits and reject the flawed reasoning of NAB and others who continue distorting the facts as established in the record.

V. Failing and Exiting Assets

These matters are not relevant to this merger request.

CONCLUSION

An individual consumer cannot reasonably address every issue related to the Horizontal Merger Guidelines, for example, perform economic modeling. But an individual consumer can achieve reasonable success introducing selected topics, and explain them in the context of these guidelines, in the hope regulators will listen and weigh these concerns. That is what I have attempted to do. I have studied many of the issues; followed the news, read various filings, read various letters and reports from those commissioned by both NAB and the satellite radio companies, and listened to three Congressional hearings on the satellite radio merger. I am a citizen and audio entertainment consumer, and certainly no expert in any of the fields associated with this license transfer request—antitrust, regulation, broadcasting, radio, advertising, manufacturing, economics, finance, public interest, etc. I am a listener of satellite radio and my enjoyment of the service is a compelling reason for my past and present investments in both companies. Nevertheless, I believe my investigation into these merger issues is 1) independent and sound, and 2) has led me to the same conclusions most reasonably informed consumers are drawn to.

The single most important conclusion I draw is the government must stop protecting terrestrial radio from satellite radio competition and start doing more to prevent apparent collusion between terrestrial radio and others in the industry that participate in royalty exemptions and bribes, and issue appropriate punishments when gross violations are committed. The 1997 SDARS Report & Order which licensed satellite radio specifically stated, "The public interest in this regard is the provision of services of value to the listening public and includes the protection of competition, not competitors." These protections and violations result in unfair competitive advantages which harm the consumer and competitors like satellite radio, and others. When the FCC licensed satellite radio in 1997, the rules were biased in favor of terrestrial radio. NAB and terrestrial radio broadcasters, the long established industry with virtually no outside competition, successfully argued for brisk competition within the satellite radio sector. In the end, they were successful getting the FCC to unnecessarily divide the competition by requiring two competitors in satellite radio instead of making no requirement whatsoever. Fairness would not have required two satellite radio companies which have inherently high barriers to entry; especially in today's completely evolved, and rapidly advancing, audio entertainment environment. Allowing the satellite radio companies to merge now, is the right thing to do. It will serve to eliminate the unfair and biased rules established when satellite radio was originally licensed, stabilize the satellite radio sector from unfair competitive advantage enjoyed by terrestrial radio, who provides a free service, and it will allow synergies to realize even more competitive opportunities in the marketplace which will ultimately bring tremendous benefit to the consumer in the form of combined content, lower prices and improved technology.

I sincerely hope those involved in evaluating this application seeking permission to transfer control of Commission licenses and authorizations will recognize the truth about what is going on with these issues. My investigation has revealed clever misinformation being presented to confuse the public and dissuade regulators from allowing this merger to proceed. I trust in the end, the public will be satisfied with the decisions made by regulators on our behalf.